

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

TRANSCRIPT OF EMERGENCY MOTION FOR ENTRY OF AN  
ORDER (I) APPROVING LIMITED MODIFICATIONS TO THE  
SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
WASHINGTON PRIME GROUP INC. AND ITS DEBTOR AFFILIATES AND  
(II) GRANTING RELATED RELIEF [1082]  
BEFORE THE HONORABLE MARVIN ISGUR VIA VIDEOCONFERENCE  
UNITED STATES BANKRUPTCY COURT JUDGE

## TELEPHONIC APPEARANCES:

For the Debtor: Jackson Walker  
By: MATTHEW CAVANAUGH, ESQ.  
KRISTHY PEGUERO, ESQ.  
1401 McKinney Street, Suite 1900  
Houston, TX 77010  
(713) 752-4200

Kirkland & Ellis  
By: CHAD HUSNICK, ESQ.  
300 North LaSalle  
Chicago, IL 60654  
(312) 862-2009

Kirkland & Ellis  
BY: ALEX NICAS, ESQ.  
JOSHUA SUSSBERG, ESQ.  
601 Lexington Avenue  
New York, NY 10022  
(212) 390-4135

## APPEARANCES CONTINUED.

Audio Operator: Name, ECR

Transcription Company: Access Transcripts, LLC  
10110 Youngwood Lane  
Fishers, IN 46048  
(855) 873-2223  
[www.accesstranscripts.com](http://www.accesstranscripts.com)

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

**TELEPHONIC APPEARANCES (Continued) :**

2

## For Strategic Value Partners, LLC

Haynes and Boone, LLP  
By: MARTHA WYRICK, ESQ.  
CHARLES BECKHAM JR., ESQ.  
1221 McKinney Street, Suite 4000  
Houston, TX 77010  
(713) 547-2000

Davis Polk & Wardwell, LLP  
By: DAMIAN SCHAIBLE, ESQ.  
ANGELA LIBBY, ESQ.  
ARYEH FALK, ESQ.  
450 Lexington Avenue  
New York, NY 10017  
(212) 450-4000

For Official Committee  
of Equity Security  
Holders

Brown Rudnick LLP  
By: MICHAEL WINOGRAD, ESQ.  
BENNETT SILVERBERG, ESQ.  
7 Times Square  
New York, NY 10036  
(212) 209-4800

For Wilmington Savings  
Fund Society, FSB

Kilpatrick Townsend & Stockton LLP  
By: GIANFRANCO FINIZIO, ESQ.  
The Grace Building  
1114 Avenue of the Americas,  
New York, NY 10036  
(212)

Also Present:

KEVIN BARNES, Preferred Shareholder



1                   (Proceedings commence at 2:27 p.m.)

2                   THE COURT: All right. Good afternoon. We're here  
3 in the Washington Prime Group case. It's 21-31948. If you  
4 wish to speak at today's hearing, if you would please press  
5 "five star" on your line.

6                   Mr. Stark, good afternoon. Mr. Stark? Or maybe  
7 somebody else from his firm. It's (212) 209-4800. I'll come  
8 back to him in a minute.

9                   Mr. Nicas, can you hear me all right?

10                  MR. NICAS: Yes. Yes, I can, Your Honor. Can you  
11 hear me okay?

12                  THE COURT: I can. Good afternoon.

13                  MR. NICAS: Good afternoon, Your Honor. Unless  
14 Mr. Stark would like to hop in, I'm happy to jump into today's  
15 agenda.

16                  THE COURT: Well, I want to find out -- I want to be  
17 sure we're aren't having technical problems, because he had  
18 pressed "five star" to connect, and I don't hear him, so -- I  
19 also don't see him. Let's just wait a second and see what's  
20 going on.

21                  Mr. Winograd, that may have been your line, then,  
22 because it probably is going to register the same on my phone  
23 system. Can you say something? No, I can't hear you there.

24                  Here's Mr. Stark coming back in. Let's try that.  
25 Mr. Stark, are you there? Or Mr. Winograd again?

1           MR. SILVERBERG: Your Honor, it's Bennett Silverberg  
2 from Brown Rudnick (indiscernible) and not Mr. Stark.

3           MR. WINOGRAD: And Judge, this is Michael Winograd.  
4 I don't know if you can hear me now.

5           THE COURT: I can hear you, Mr. Winograd, and I'm not  
6 sure who spoke right before you.

7           MR. WINOGRAD: I think that was --

8           MR. SILVERBERG: Your Honor --

9           MR. WINOGRAD: Oh, go ahead.

10          MR. SILVERBERG: Sorry, Your Honor. It's Bennett  
11 Silverberg.

12          THE COURT: Oh, Mr. Silverberg. Good afternoon. All  
13 right.

14          MR. SILVERBERG: Good afternoon.

15          THE COURT: Mr. Nicas, let me just make a couple of  
16 comments that I think go in somewhat opposite directions that  
17 will at least tell you what I'm worried about today.

18          MR. NICAS: Okay.

19          THE COURT: And one is, I'm not sure this can be done  
20 without notice to all parties, and not just to the master  
21 service list. So I don't know if we're here on good notice.  
22 And then the comment I'm going to make that goes the opposite  
23 direction is, I'm not sure why the moment after the effective  
24 moment, the board couldn't do this anyway. And so I -- I think  
25 one of those tells you, I'm a little worried whether I can do

1 it, and then the other one says, I don't know that it's that  
2 big of a deal to have the hearing on it. But I need to address  
3 at least the first one, and maybe find out why we're here on a  
4 mod as opposed to the board deciding it's a smart move. So  
5 tell me a little bit about where we are, if you don't mind, and  
6 tell me about whether, under the rules, what notice you think  
7 is required to do this, because I couldn't, in my own mind,  
8 find anything that said that it was okay not to serve  
9 everybody, and I may have just -- I didn't exhaustively  
10 research it, and I may have just missed that.

11 MR. NICAS: So Your Honor, just to start, again,  
12 Alexander Nicas from Kirkland & Ellis, counsel for the debtors.  
13 We appreciate Your Honor taking the time this afternoon to hear  
14 the debtors' emergency motion for entry of an order approving  
15 limited modifications to the plan.

16 Your Honor, we believe that notice and service is  
17 appropriate here, primarily because ultimately, the  
18 modifications as proposed pursuant to the motion don't  
19 adversely material or adversely affect the treatment of any  
20 claims or interests under the plan without their consent. Plan  
21 modifications simply are tweaks to two definitions under the  
22 plan to allow for certain cash that was otherwise to be paid to  
23 the holders of Class 4B Webber's Town Term Loan Facility  
24 Claims.

25 That cash under the plan was segregated into a

1 Webber's Town Cash Pool, another defined term under the plan,  
2 and that cash was to be paid to the holders of the Webber's  
3 Town Term Loan Facility Claims. The proposal set forth in the  
4 motion and the monefied definitions in the plan simply alter,  
5 and really, this is all that's happening under the  
6 modifications, simply alters whether those holders of the  
7 Webber's Town Term Loan Facility Claims are to receive their  
8 treatment under the plan in cash, or as additional debt that'll  
9 be rolled into the new exit, new term loan exit facility, and  
10 it's only impacting the treatment of those holders. There are  
11 only two holders of the Webber's Town Term Loan Facility, and  
12 those holders both consent, have consented, to the  
13 modifications set forth in the motion, and to the altered  
14 treatment under the would be then modified plan.

15 So from a service and notice perspective, the reality  
16 is that no other holders of claims or interests under the plan  
17 are being altered or modified in any way, shape, or form. The  
18 existing GUC claim, general unsecured claims, still are  
19 unimpaired under the plan. They are to receive cash, paid in  
20 full at emergence, or in the ordinary course of business  
21 thereafter; and existing equity interests in other noteholders  
22 whose claims or interests are being either equitized or paid in  
23 cash, again, are receiving the exact same treatment under the  
24 plan.

25 So ultimately, Your Honor, we think that service and

1 notice of this motion on the parties who we set forth in the  
2 motion, including all the key stakeholders, the top 30, anybody  
3 who requested notice in these Chapter 11 cases is proper,  
4 because ultimately, there are no holders of claims or interests  
5 whose treatment of claims are being impacted whatsoever.

6 THE COURT: What does this change do -- are there any  
7 conversion rights, for example, where they are increased  
8 because there is now more debt? And what does this do to the  
9 feasibility of the plan as a consequence of more debt?

10 MR. NICAS: On the first point, Your Honor, under the  
11 new term loan exit facility term sheet that was filed on the  
12 first day of the cases, there was a basket of \$50 million,  
13 which was apportioned for either an incremental additional term  
14 loans, or a revolving credit facility.

15 So from the get-go of these Chapter 11 cases, it was  
16 always contemplated that a new term loan exit facility could  
17 flex by up to \$50 million, vis-a-vis new money coming in to  
18 fund an incremental term loan or a revolver. So that's been --  
19 everybody -- all parties have been on notice since the get-go.  
20 It's under the plan, it's under the new exit facility term  
21 sheet, that's all been -- it's been fully disclosed since day  
22 one that that is a possibility.

23 And with respect to the -- that's on a conversion,  
24 right, so all parties were aware of that from the get-go.

25 THE COURT: I don't -- no -- I mean conversion into

1 equity. Is there any conversion right to equity by the holders  
2 of the facility?

3 MR. NICAS: Of this -- of the Class 4B, Webber's Town  
4 Term Loan Facility, the full amount of the claims were either  
5 being paid in cash, or being converted into the new exit, new  
6 term loan exit facility. So there was never an equitization of  
7 the claims of the holders of this facility.

8 THE COURT: Right. And the holder -- I'm not asking  
9 my question well. The holders of the exit facility. Will they  
10 have any future warrants, or conversion rights, or any ability  
11 to dilute equity that would change by increasing that loan?

12 MR. NICAS: The answer is no. The answer is no.

13 THE COURT: Okay.

14 MR. NICAS: Those holders --

15 THE COURT: Okay. I just didn't ask the question  
16 properly.

17 MR. NICAS: -- those holders are debt holders, and  
18 that is all they are. The equity under the plan, the equity is  
19 being apportioned to the note holders, and converting their  
20 debt to equity, as well as any equity holders who have elected  
21 -- have been able to, under the plan, based on the certain  
22 definitions, and did so elect to receive equity under the new  
23 plan.

24 So in effect, Your Honor, this -- the plan  
25 modifications as proposed actually are avoiding another result,

1 which was, to the extent that the debtors needed to raise  
2 additional cash to ensure that they could make the  
3 distributions under the plan on the effective date, and to  
4 adequately capitalize the reorganized debtors, additional cash  
5 is needed to effectuate both of those prongs.

6 We could have delayed the process, and sought to  
7 increase the rights offering. That was potentially another  
8 option to generate additional liquidity at emergence, and that  
9 would have, if we had gone down that path, that would have  
10 diluted any post-emergence holder of new common equity as a  
11 result of the increased rights offering that would have been  
12 put into place.

13 So what we did here, Your Honor, is actually to avoid  
14 the results that I think that Your Honor's getting to, by  
15 capitalizing debt that otherwise would have been paid in cash,  
16 we've actually preserved the post-emergence ownership structure  
17 for holders of new common equity without further dilution. We  
18 have only incrementally added up to \$40 million of new debt to  
19 the new term loan exit facility, which itself was already over  
20 a \$1.2 billion facility, so it's a very incremental increase,  
21 in the overall outstanding amount of debt of the new term loan  
22 exit facility, but additionally, for every dollar of debt  
23 that's capitalized, the company retains on the balance sheet an  
24 equivalent amount of cash, which, cash is king, and very  
25 important in still very difficult times, overall. Of course

1 COVID still exists, and the company continues to, you know,  
2 plow through and execute on its business plan, and it has to  
3 date met its forecast, and has performed operationally well, to  
4 date.

5 This is not an issue -- a liquidity issue that  
6 results from the operations of the company at all. The  
7 liquidity issue is, frankly, a result of the fact that over the  
8 course of the Chapter 11 cases, through the negotiated  
9 settlements with the equity committee and other parties, there  
10 was an increase in the overall equity cash pool from  
11 \$40 million under the RSA to what turned out to be 50 million  
12 -- \$57, excuse me, million under the confirmed plan. That's a  
13 \$17 million increase, and of course there was some additional  
14 legal fees through an equity committee and other litigation  
15 during the case, and as a result, the cost of the case, and the  
16 distribution, the cash distributions to stakeholders,  
17 increased, resulted in a small -- I wouldn't call it a deficit.

18 But where we are today, the company will benefit  
19 greatly, and will be on solid footing from a feasibility  
20 perspective at plan -- excuse me, at emergence, on the  
21 effective date, and to continue post-effective date with  
22 sufficient cash, it was necessary to determine how we could  
23 utilize various levers to generate that additional liquidity  
24 and make sure the company was on solid footing on day one,  
25 post-effective date.

1           So this -- we view this, the plan modifications, as  
2 ultimately the best available path forward to ensure that we  
3 don't do exactly what Your Honor I think was getting at, which  
4 is to dilute new common equity ownership. Ultimately, these  
5 holders were otherwise receiving debt under the plan, dollar  
6 for dollar. The Webber's Town Term Loan Facility was being  
7 rolled into the exit, and there was a sub-portion of  
8 \$40 million to be paid in cash. Those holders have elected to  
9 forego that cash, and to capitalize their debt, allowing the  
10 company to retain that cash on the balance sheet and leave it  
11 on solid footing on day one.

12           With respect to service and notice in particular, I  
13 think ultimately, 3019(b), I'm just reading the rule real  
14 quickly, Your Honor. I believe it's after notice and a hearing  
15 that the Court can approve the modifications.

16           THE COURT: That's rather the --

17           MR. NICAS: The Court finds the --

18           THE COURT: -- 3019(b) applies to individuals, right?

19           MR. NICAS: 3019(b), yes, and I guess 3019(a) is  
20 before confirmation. Of course, we're after confirmation, what  
21 has --

22           THE COURT: No, I'm saying, (b) is for an individual  
23 debtor not a corporate debtor.

24           MR. NICAS: Correct. Correct.

25           THE COURT: So we're after --

1 MR. NICAS: We may be --

2 THE COURT: -- we're after confirmation, and before  
3 the effective date. What rule do you think governs this?

4 MR. NICAS: I -- Your Honor, I still think, even  
5 though 3019(a) is before confirmation, I think we're still in  
6 the same position here now post-confirmation. Ultimately, as  
7 we've laid out in the motion, and the substance of this, the  
8 modifications themselves, warrant that a modification here is  
9 necessary to ensure that the company can consummate the plan,  
10 the debtors can consummate the plan, and apart from the rule  
11 itself, of course, as we set forth in the motion, the  
12 confirmation order and the plan itself authorize the debtors to  
13 take all -- any and all action necessary to consummate the  
14 plan, and to implement it, even post-confirmation.

15 THE COURT: You know, we were going to the notice  
16 question, though, so do you know what rule is going to govern  
17 notice?

18 MR. NICAS: Not off the top of my head, Your Honor.  
19 Again, I think --

20 THE COURT: Okay.

21 MR. NICAS: -- the plan and the confirmation.

22 THE COURT: All right. Let me hear from other  
23 participants. I'm going to ask you one more question before we  
24 go to them, though. If the new board, after the effective  
25 date, decides to repay the additional borrowing, may it do so

1 without penalty?

2 MR. NICAS: Once the Webber's Town Term Loan Facility  
3 Claims are rolled into the exit facility?

4 THE COURT: Yes. Can they then pay off that portion  
5 that rolled in?

6 MR. NICAS: The debt would be considered regular new  
7 term loan exit facility debt, and it's subject to the credit  
8 agreement, which the negotiations are being finalized on, and I  
9 believe the answer is -- when you say without penalty, there is  
10 call protection that's built in to the new term loan exit  
11 facility --

12 THE COURT: All right. But would --

13 MR. NICAS: -- under the credit agreement.

14 THE COURT: -- but if they would waive the call  
15 protection for a couple of weeks so the new board could pay it  
16 off during the two weeks, not the whole thing, just this  
17 incremental portion, it would seem to me that then I'm in a  
18 position where I've done no harm. Because the new board could  
19 decide to return to where it would have been without this  
20 amendment. The call protection on this small amount is  
21 probably largely irrelevant to them. You know, maybe not. And  
22 maybe it's not necessary to get my approval today. I'm not  
23 insisting on it. I'm simply asking so that I know where we  
24 are, and this goes a bit into the notice issue for me as well,  
25 because, you know, if -- I'm not sure notice is good. I'm not

1 sure notice is not good. But if I haven't changed what the  
2 rights are by giving the board two weeks to reverse it, this  
3 doesn't seem like much.

4 I've got somebody from 917. That may be Ms. Libby.  
5 Let me see. Ms. Libby, is that you at (917) 691-8873? Maybe  
6 not. Who do we have --

7 MR. FELDMAN: No, Your Honor, that's Josh Feldman  
8 from (indiscernible) that's been -- represent the lenders, the  
9 ad-hoc group of lenders here, but --

10 THE COURT: Thank you.

11 MR. FELDMAN: -- if you want to hear from Ms. Libby,  
12 (indiscernible) inappropriate.

13 THE COURT: No, no, now's a great time, if you can  
14 help me through that.

15 MR. FELDMAN: Yes, well, by and large -- not even by  
16 and large. Full on, our group who has been involved with this,  
17 you know, literally since February, and worked on the original  
18 term sheets to which Mr. Nicas referred, we're supportive here.  
19 Everybody understands how this case went. A little bit more  
20 time and a little bit more expense, but to get favorable  
21 results, which is to say, a consensual plan which Your Honor  
22 approved a short time ago.

23 As a result, there's a little bit more of a cash  
24 need. You asked initially, Your Honor, a question to the  
25 effect of, why can't this just be done after the fact?

1 Mr. Nicas answered indirectly and correctly, that it  
2 effectively can, in the sense that they always, always, always,  
3 from the first term sheet, had built in room for an additional  
4 \$50 million of debt, and that was because things arise. Now,  
5 we had not anticipated that it would arise in this matter so  
6 quickly, and I think we are supportive of the relief now,  
7 because the hassle and kind of incremental expense of dealing  
8 with amendments, and so forth after the fact, it doesn't seem  
9 worth the candle.

10 So setting aside the procedural question, which I  
11 certainly understand the concern, I would reiterate that this  
12 has been done with Ms. Libby and her clients, of course, the  
13 plan sponsors, the ad-hoc lender group is supportive. The only  
14 change to the lenders writ large is that the \$1.3 billion of  
15 exit debt will now be 1.34. We've concluded it's a marginal  
16 change, and net debt won't change at all, right, because  
17 40 million of that cash will go out the door. So gross debt  
18 increases by 40, net debt increases by zero, the company came  
19 to us and said, hey, this makes sense. Let's do it in this  
20 manner. We absolutely agreed, and so we are supportive, and I  
21 just thought we would put that out there. And it is kind of a  
22 win/win/win for everybody, in light of the facts where we  
23 landed today.

24 THE COURT: All right. Thank you.

25 Ms. Libby, I see you've now joined in. Thank you.

1 Good afternoon.

2 MS. LIBBY: Good afternoon, Your Honor. Angela Libby  
3 on behalf of SVP. I would largely reiterate what Mr. Feldman  
4 said. You know, at the end of the day, the company identified  
5 a small gap and a small problem, you know, between now and  
6 emergence, and it really looked to as few stakeholders as  
7 possible to bridge that gap and solve the problem, with as  
8 little impact on everybody else as possible. And that was  
9 really looking to SVP, who was the holder of the Webber's Town  
10 Loan and looking to Mr. Feldman's client, and they really  
11 stepped up to the plate here to just solve this issue and to  
12 try to do it as seamlessly as possible.

13 And as to your question, I mean, as Mr. Feldman said,  
14 this really is largely just trying to utilize existing credit  
15 facility as negotiations are ongoing, and it could easily be  
16 baked into that, and it really just avoids the need to sort of  
17 round trip, you know, cash to these holders, and then  
18 effectuate what could otherwise be done post-emergence, which  
19 round tripping, you know, for that moment in time, would create  
20 this gap that Mr. Nicas has -- you know, has identified.

21 So it really just is trying to make sure that we  
22 stage things appropriately, so that we can have as seamless an  
23 emergence as possible here.

24 THE COURT: And do you see any problem, if I were to  
25 add into an order that approves this, that for 14 days after

1 the effective date, the \$40 million at the board's option can  
2 be prepaid without penalty? Is that going to really cause  
3 heartburn to anybody?

4 MS. LIBBY: Your Honor, I'd probably turn it over to  
5 Mr. Feldman, because I don't want to speak for his client.  
6 Obviously, you know, as Your Honor knows, my client will have  
7 significant board representation, and has really worked with  
8 the company to identify what this need is, and does anticipate  
9 that this liquidity will provide stability, you know, for more  
10 than two weeks. So I think they probably have decent insight  
11 here into what the plan does post-emergence, but I will leave  
12 it to Mr. Feldman to weigh in, as to whether he has to initiate  
13 the proper protocol.

14 THE COURT: Mr. Feldman, would that cause any  
15 problem?

16 MR. FELDMAN: Hi, Your Honor. Am I being heard?

17 THE COURT: Yes, sir.

18 MR. FELDMAN: Okay, thank you. I -- we're not in a  
19 position to accept that. It's not an unfair proposal on the  
20 face of it, but the economics of this are that, okay, we'll  
21 accept more of the debt -- when I say we, by the way, I want to  
22 point out that the Webber's Town holders are the sponsor  
23 themselves, and one of my clients. And they agreed to roll  
24 into the existing debt, or the debt that's about to be  
25 existing, on the exact same terms, and it's not just a question

1 of oh, what happens if I get paid without the call protection.  
2 It's also -- it now represents a couple of weeks of  
3 nonfungible, nontradeable, idiosyncratic debt, that would  
4 actually create a new tranche under the credit agreement, and  
5 might, you know, frankly, eliminate the efficiencies that we  
6 were hoping to gain by pursuing the process in this manner.

7           I suppose I would stress, and I understand the  
8 concern that you're expressing, but I'm certainly not in a  
9 position to agree to that. On behalf of my clients, I would  
10 offer the following, which I think Ms. Libby was getting to,  
11 which is -- and Mr. Nicas went through this a moment ago.

12           The cash change that arose from a somewhat longer  
13 case, a somewhat more expensive case, and the kind of happy  
14 conclusion of getting a little bit more value to equity, to the  
15 tune of \$17 million of cash, these are permanent needs, this is  
16 not a short-term shift in working capital. Everybody believes,  
17 which is the reason my clients are happy with this proposal,  
18 everybody believes that the company can more than handle the  
19 debt. As Mr. Nicas said, the operations seem to be on track  
20 with people's expectations. But there was this permanent  
21 one-time use of cash, and so the notion that even if the board  
22 had two weeks to redeem it, that they would somehow come up  
23 with 40 million more of cash, whether by doing a new equity  
24 offering, or a cheaper debt financing, those aren't real  
25 plausible in the sense that nobody would roll into 40 million

1 of junior debt behind a 1.3 billion that will be there pursuant  
2 to the plan, other than on more expensive terms.

3 I -- our clients, or my clients, were content to roll  
4 into the debt on the existing terms, which I think is about  
5 as --

6 THE COURT: Well, let me do --

7 MR. FELDMAN: -- (indiscernible).

8 THE COURT: -- and I may be missing part of the  
9 problem here, but it seems to me that if I don't approve this,  
10 that the deal closes, and there's just \$40 million less in cash  
11 reserves, and, you know, the board could then borrow 40 million  
12 more. That's the only position I'm wondering whether we can --  
13 you know, could the new board decide it doesn't want those 40  
14 million of cash reserves, and therefore pre-pay it. I don't  
15 know that it's essential. What's the call protection on the  
16 40 million? How much money are we talking about?

17 MR. FELDMAN: Yes. It's -- in the first year, the  
18 call protection is two points. So 2 percent of 40 million is,  
19 what --

20 THE COURT: Eight hundred --

21 MR. FELDMAN: -- \$800,000?

22 THE COURT: -- it's \$800,000. Okay.

23 MR. FELDMAN: Correct, yes.

24 THE COURT: The board for \$800,000, potentially spent  
25 -- or a contingent of 800,000, can have the option of having 40

1 million more of cash? Is that one way of looking at this?

2 MR. FELDMAN: I think it's precisely the right way to  
3 look at it, Your Honor, and the cost of closing and then going  
4 out and getting some type of new facility, or tacking on, in  
5 terms of just transactional expenses, I would submit, from  
6 experience, would likely exceed \$800,000.

7 THE COURT: Yeah. Unfortunately, in a case this  
8 size --

9 MR. FELDMAN: Some markets, Your Honor, but --

10 THE COURT: -- everything exceeds \$800,000, so I  
11 understand that part.

12 Mr. Silverberg, what's the committee's position on  
13 this?

14 MR. SILVERBERG: Your Honor, Bennett Silverberg on  
15 behalf of the official equity committee. We're supportive of  
16 the debtor's proposed modifications and don't take any issue  
17 with them.

18 THE COURT: Okay.

19 Does anybody want to offer any objection to what's  
20 happening here? It seems like it's a kumbaya minute for  
21 everybody other than perhaps me, and I want to hear if we have  
22 any objections to it. Okay.

23 Does anybody else --

24 MR. WINOGRAD: Your Honor, may I speak --

25 THE COURT: Yes, go ahead, Mr. Winograd.

1                   MR. WINOGRAD: Sorry, this is Mike Winograd from  
2 Brown Rudnick, Your Honor, on behalf of the official equity  
3 committee. We don't have an objection, but I did want to just  
4 preview a point with the Court. We're hoping it won't require  
5 the Court's intervention. We're working diligently with  
6 debtors and SVP, and I think we're close to resolving the  
7 issue, but -- and I'm hopeful we will resolve the issue, but I  
8 did just want to preview a small issue with you to the extent  
9 that it needs to be raised in the coming weeks.

10                  THE COURT: All right. Let -- but it -- should we  
11 finish this, and then I'll come back to you before we finish  
12 the hearing? Is that what you're asking to do?

13                  MR. WINOGRAD: Sure. That's fine, Your Honor.

14                  THE COURT: Okay.

15                  Does anybody else want to pitch in on the notice  
16 issue, and argue anything different than what Mr. Nicas has  
17 argued already? If so, please press "five star" one time. All  
18 right.

19                  I think, although it's not entirely clear, that  
20 3019(a), as Mr. Nicas argued, should apply in the situation  
21 where you are still before the effective date, because we are  
22 under the terms of the confirmation order, we have not yet made  
23 any changes by confirming a plan that hasn't yet gone  
24 effective. And although the rule is not absolutely clear about  
25 that, it is, I think, the best analogy. And I don't think this

1 is a material adverse change, I don't think it's an adverse  
2 change at all. I think it is only favorable to the debtor, and  
3 the parties that are entitled to notice under 3019(a) are given  
4 that notice.

5           The only other thing I was able to find when  
6 preparing for the hearing that might govern this is Rule 2002,  
7 which might require notice to everybody in the case, and it  
8 just doesn't seem to me that this is the type of change that  
9 would require that from a logical point of view, especially  
10 given the presence of 3019(a).

11           So although I may change my mind in a future case,  
12 I'm not guaranteeing to everybody this will always work,  
13 because somebody's going to be more prepared for arguments next  
14 time, but I'm raising the notice question this time, but --  
15 hold on, I'm getting a lot of background noise. Let me see if  
16 I can --

17           Whoever has some folks talking in the background, can  
18 you please mute your own line?

19           I'll try it again. So I think that 3019(a) is most  
20 likely to be the governing rule, and if not the governing rule,  
21 then I believe under the basic principles of the rule, which is  
22 that the purpose of the rules is the just, efficient  
23 application of the rules to the Code that notice is adequate.  
24 This appears to me to be entirely in the best interest of all  
25 parties concerned, and for all of those who are directly

1 concerned, they have consented.

2 As to others, it appears not to diminish feasibility,  
3 i.e., the payment of additional debt service on the \$40  
4 million, anywhere near as much as it enhances feasibility by  
5 giving the debtors \$40 million in cash.

6 Finally, this exact outcome, in my view, is  
7 authorized by the plan, but it would occur -- it could occur  
8 shortly after the effective date, and if I wait and let it  
9 occur after the effective date, I think the parties are  
10 absolutely right, that this debt would be more expensive, both  
11 from an actual interest rate point of view, but also and maybe  
12 even more importantly, just the legal expenses are going to be  
13 huge in order to do it.

14 So I'm not authorizing anything that the board  
15 couldn't do, I'm just making it cheaper. And the cost of me  
16 making it cheaper, with everybody's consent here, in my view is  
17 the \$800,000 that's only a contingency, so that if the new  
18 board sees something that no one on the call has seen, and that  
19 I'm not seeing, and decides this was a bad decision, I've only  
20 imposed an \$800,000 cost on the new board.

21 I really can't imagine the board of a reorganized  
22 company like this that is very much a capital needs company,  
23 from deciding that capital at this cost to enhance the  
24 liquidity of the balance sheet from \$40 million, if the board  
25 decides that's a bad idea, I'll be pretty surprised, like

1 everybody on the call will be, but leaving the board that  
2 option in case we're just really missing something, that tells  
3 me that it's okay to do it. So I'm going to approve the  
4 modification as a matter of principle.

5 I don't know if you want any evidence in support of  
6 it, given that it's unopposed, Mr. Nicas, or if you want me to  
7 simply accept the logic of it and the representation of  
8 counsel, but, you know, you tell me what you need to do in  
9 order to prove this up, and I'll give you that opportunity.

10 MR. NICAS: Thank you, Your Honor. We believe that  
11 no evidence is actually necessary at this juncture. We would  
12 ask that you approve the order that's attached to the motion.

13 THE COURT: All right. Just a minute. I'm just  
14 putting it into a form that can go directly into docketing, so  
15 that we can get this done this afternoon. This won't take but  
16 a second.

17 Any objection to the form of the order by anyone?  
18 All right. That will be docketed, probably before we finish  
19 the hearing, but we'll see.

20 Mr. Winograd, you had something you wanted to say?

21 MR. WINOGRAD: Yes, Your Honor, thank you. Again,  
22 Michael Winograd for the record, of Brown Rudnick, on behalf of  
23 the official equity committee.

24 And again, Your Honor, I just want to raise very  
25 briefly a point that may require the Court's intervention. We

1 hope it will not. We're working diligently with debtors and  
2 SVP to resolve the issue. We think we're close. We're hopeful  
3 we will resolve it. We've worked cooperatively throughout this  
4 case thus far.

5           But just in case, I did want to preview the issue  
6 with Your Honor. It relates to the limited liability company  
7 agreement, which is at Docket Number 977, and specifically,  
8 Section 11.3(b) as in boy, which is at ECF Page 80 of 109, at  
9 Docket 977.

10           And that provision, Your Honor, is entitled press  
11 release communications. It deals with public statements, and  
12 it effectively says that all public statements are controlled  
13 by the board, it's up to the board to -- you know, any such  
14 public statement shall be made only and such -- and at such  
15 time and in such manner as determined by the board. These  
16 relate to any public statements by -- with respect to the LLC  
17 agreement or anything related thereto, which easily is -- could  
18 be interpreted, we fear, as relating to the company generally.

19           And our concern with this is that it potentially  
20 impinges the ability of the minority shareholders to exercise  
21 minority protections. For example, in order to trade their  
22 units, which is an express protection, they would need to,  
23 presumably, find a market on, for example, a Yahoo platform.  
24 This potentially would prevent that. It would eliminate their  
25 ability to protect against unfair transactions by voicing their

1 concerns over sort of actions that are being taken by the  
2 company.

3                 The LLC raised these concerns beforehand. It  
4 provided comments that specifically requested that this  
5 provision come out. The debtors and SVP took some but not all  
6 comments. They left this provision in. The document was filed  
7 the LLCA with the understanding that it would be -- the OEC  
8 reserved its rights to challenge any specific provisions. And  
9 we have concerns over this provision.

10               Again, we are working on the language, and we're  
11 working with SVP and the debtors to hopefully resolve this  
12 issue, but again, Your Honor, I just did want to raise it with  
13 Your Honor in case we needed to be heard prior to the  
14 confirmation of the plan, which I believe is scheduled for  
15 October 15th.

16               MS. LIBBY: Your Honor, if I may speak?

17               THE COURT: Sure.

18               MS. LIBBY: Your Honor, this particular provision is  
19 one that folks have been going back and forth on the drafting.  
20 It's completely unclear whether there's any dispute at this  
21 point. As Mr. Winograd said, the parties are working together  
22 to try to resolve any concerns.

23               The case has been shockingly consensual since the  
24 confirmation, and we expect that it will very much continue to  
25 be, and we are very much in real time, even before the hearing,

1 just making sure that we prioritize those comments from the  
2 OEC. I think in all honesty, we didn't appreciate the urgency  
3 that they viewed it under prior to this hearing. But, you  
4 know, they raised it today, and we've been working with them  
5 today to resolve, and we fully expect that we will do so  
6 without having to come back before Your Honor in any form or  
7 fashion.

8 THE COURT: I do, too, Ms. Libby. When are you going  
9 to try and close?

10 MS. LIBBY: We were targeting Friday, but it looks  
11 like, given that it's a multi-step closing, we are likely going  
12 to start closing on Monday, is the current goal. And we -- the  
13 -- we will absolutely not keep the OEC on pins and needles  
14 until then. We are actively working to resolve things, and  
15 folks spoke right before this hearing. I expect it'll get  
16 resolved today, if not first thing in the morning.

17 THE COURT: So what I want to do is to assure that I  
18 don't delay your closing. Would it help if I just gave you a  
19 standby hearing at 8:45 on Monday morning, the 18th, so that if  
20 you do have a problem, I'll resolve it then? Or would you  
21 rather not have that standby hearing? It's really up to you.

22 MS. LIBBY: You know, Your Honor, it can't hurt to  
23 have it scheduled, or have Your Honor block time, if you would  
24 be so gracious to do so. But we truly really do not expect  
25 that we'll need that time.

1           THE COURT: Yeah. Do me a favor, and if you don't  
2 need it -- I'm going to go ahead and put it down at 8:45, just  
3 a plan effectiveness status conference at 845 in the morning on  
4 the 18th. And I'm going to tell Ms. Doe that if she receives  
5 an email from you and Mr. Winograd, where you're both on it,  
6 that cancels the need for the hearing, that we'll just take it  
7 off the docket. But that'll give you all weekend to try to  
8 work through it, and it'll also give you a closing for sure.  
9 Because I promise I will make a sentence like that work. I  
10 don't know what it'll say, because I don't really understand  
11 the problem. But, you know, that isn't going to hold up your  
12 closing. But you may need somebody just to be, you know, the  
13 Tsar that tells you what that magic word's going to be, and I  
14 don't want to delay you by you needing to get on my calendar.  
15 So if that works for you all, that's what we'll do.

16           Mr. Winograd, do you mind that arrangement?

17           MR. WINOGRAD: No, that sounds great, Your Honor.

18           THE COURT: All right. So I think having the  
19 hearing, there's no way you're going to need it, now that you  
20 have it, so you've got it. But take it away from me as soon as  
21 you can.

22           What else can we do today?

23           MR. NICAS: Your Honor, from the debtor's  
24 perspective, nothing else. We appreciate Your Honor's  
25 questions, and we greatly look forward to closing of this case,

1 and emerging in the very near term.

2 THE COURT: I look forward to that as well. Thank  
3 you all for coming in today. Sorry that I ended up with a lot  
4 of questions about this, but I wanted to be sure where we were  
5 going, and you answered them all, and that's very much  
6 appreciated. So thank you, and we'll go ahead and adjourn the  
7 hearing.

8 MR. NICAS: Thank you, Your Honor.

9 MR. WINOGRAD: Thank you, Your Honor.

10 (Proceedings concluded at 3:08 p.m.)

11 \* \* \* \* \*

12

13

14

**C E R T I F I C A T I O N**

15

16 I, Alicia Jarrett, court-approved transcriber, hereby  
17 certify that the foregoing is a correct transcript from the  
18 official electronic sound recording of the proceedings in the  
19 above-entitled matter.

20

21

22

23

24 ALICIA JARRETT, AAERT NO. 428

DATE: October 14, 2021

25 ACCESS TRANSCRIPTS, LLC